IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 12TH DECEMBER 2007 / 21ST AGRAHAYANA 1929

CRL.A.No. 1709 of 2004()

SC.60/2003 of ADDITIONAL SESSIONS COURT, FAST TRACK COURT NO.1(ADHOC) MANJERI)

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APPELLANT: ACCUSED NO.1:

AHAMMED KUTTY ALIAS MOHAMMED KUTTY,
SON OF ALAVI, MANDATHODE VEEDU,
OZHOOR AMSOM, THALKKATHUR, MALAPPURAM DISTRICT.

BY ADV. SRI.DEEPU THANKAN

RESPONDENTS: COMPLAINANT:

STATE OF KERALA, BY CIRCLE INSPECTOR
OF POLICE, TANNUR, REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR (SRI. NOBLE MATHEW)

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 12/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & K. HEMA, JJ.

Crl. Appeal No. 1709 of 2004

Dated this the 12th day of December, 2007.

JUDGMENT

Koshy, J:

Three persons faced trial in S.C.No.60 of 2003 on the file of the Sessions Division, Manjeri for offence punishable under Section 447, 341, 302 , 201, 212 read with Section 34 IPC. Appellant, who was accused No.1, was sentenced to undergo imprisonment for life and to pay fine of Rs.50,000/- for offence under Section 302 IPC. The fine if realised was ordered to be paid to the legal heirs of the deceased as compensation. No separate sentence was imposed for offence under Section 447 and 341 IPC.

2. The prosecution case is that deceased Sankaran filed O.S.No.43 of 2000 against the appellant for realisation of loan advanced to him and on the date of incident he received summons from the Munsiff Court, Thirur directing him to appear before the court on 17.2.2000. Therefore, accused became furious and committed trespass into the landed property of

Sankaran and restrained him while the deceased was planting sweet potato wines and repeatedly stabbed on his abdomen and chest. Even though injured was taken to the Govt. Hospital, Thirur, before reaching the hospital, he died. The allegation against accused Nos.2 and 3, who are the brothers of the accused, was that they aided the appellant to screen the offence and divert the attention of the police officers with an intention to save the appellant and harboured them with knowledge that he is an offender and therefore they are liable to be found guilty of offence under Section 201 and 212 read with Sec. 34 of PC. But the role of accused nos. 2 and 3 were not proved and as no appeal was filed by the State, we are considering the case of the appellant alone in this appeal.

3. PW1 is a close neighbour. He gave Ext.P1 statement immediately after the incident i.e within 2 ½ hours of the incident. PW1 deposed that at about 3.45 p.m. on 14.6.2000 he reached the market for purchasing provisions and while he was standing near a cool bar which is in front of the property of the deceased he noticed accused no.1 coming from the northern side of the road and directly entering into the landed property of the deceased and at that time deceased was planting sweet potato

wines in his property and CW2 a Tamilian was also doing labour work in the property. PW1 saw the accused stabbing the deceased. He rushed to the spot along with son of the deceased and one Vijayan. By the time they reached, many stab injuries were inflicted on him. The injured was carried in the jeep of PW3 who also witnessed the incident. At first, he was taken to the nearby private hospital and thereafter they were asked to take the injured to Govt. Hospital. His evidence is fully supported by the evidence of PW2, son of the deceased who stated that his father was planting sweet potato wines in their landed property and he was sitting in a shop along with his brother Vijayan and on hearing the screaming of the father from the property he rushed to the place along with Viajayan and the injured was taken to the hospital. The evidence of PW3 also corroborates the same. PW3 is a taxi driver in whose jeep, the injured was taken to Alukkas hospital. He also saw the incident.

4. PW7 conducted post-mortem examination and issued Ext.P5. Following are the anti-mortem injuries noted in the post-mortem certificate:

> 1. Incised penetrating wound 3.6 x 0.5 cm, transversely oblique on the left side of front of chest with the upper lateral square cut and

situated 12 cms to the left of midline and 4.5 cm below the nipple level. The lower medial end was sharp cut and was situated 9 cms. To the left of midline and 6 cms below the nipple level. The wound entered the left chest cavity by cutting the 6th intercostals muscles on the left chest cavity by cutting the 6th intetercostals muscles on the left side (chest wall) thickness 3.2 cms. In the chest cavity the wound made a cut in the lower lobe of left lung in the region of the interlobar fissure, the cut measuring 2 x 0.3 cms, 3 cms deep. This wound was situated 2.5 cms above the lower margin of left lung. Left lung was situated 2.5 cms above the lower margin of let lung. Left lung was partly collapsed. Let chest cavity contained 950cc of fluid blood and 30 gms of blood clots. The wound was directed backwards, medially and slightly downwards and had a dept of 8 cms.

2. Incised penetrating wound 3.1 x 0.5 cm, transverse, on the right side of front of chest with the medical square cut and situated 2.2 cms to the right of midline and 4 cms below the nipple level. The lateral end was sharp cut. The wound entered the right chest cavity by cutting the chest wall and the right 6th rib and its costal cartilages, 3 cms long transfers (chest wall thickness 3.2 cms) In the chest cavity the wound cut the diaphram 3 x 0.5 cm, full thickness and deep to that made a cut on the front of right lobe of liver the cut measuring 2.7 x 0.4 cm, 5 cm deep. The wound was directed beck warded and slightly downwards and had a depth of 8.5cms.

3. Incised penetrating wound 3.2 x 0.5 cm vertically oblique, on the right side of front of upper abdomen with the upper medial square cut end situated 6 cms to the right of midline and 4 cms below the costal margin. The lower lateral end was sharp cut and was situated 7 cms to the right of midline and 3.5 cms above the umbilicus level. The wound cut the abdominal wall and

> entered the abdominal cavity (abdominal wall thickness 4 cms). In the abdominal cavity the wound cut the under aspect of liver, the cut measuring 5 x 1.2 cms. 3 cms. deep. The cut was 4.5 cms behind the front margin of liver.
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> Peritoneal cavity contained 150 cc of fluid blood. The wound was directed upwards, backwards and slightly medically and had a depth of 8 cms.
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> 4. Abrasion 0.8x 0.2 cm, transverse, on front of lfet knee 1 cm below injury No.4.
>
> 5. Abrasion 1 x 0.2 cm, transverse, on front of left knee 1 cm below injury No.4."

4. The cause of injury was stated as deceased died of injuries sustained on the chest and abdomen. MO1, the weapon used by the accused for commission of offence was identified by PWs 1 to 3. MO1 weapon was recovered on the basis of the confession of the accused as per Ext.P3 mahazar. Ext.P3(a) is the relevant portion of the confession statement. Recovery was made on the way of the house of accused from the palace of incident. Ext.P19 chemical examination report also shows that MO1 knife contained human blood. The evidence of eye-witness CW1 and PW3 is very clear. Their evidence is corroborated by medical evidence and recovery of weapon (MO1).The prosecution also adduced cogent and convincing evidence to prove that

appellant and appellant alone is guilty and no one else. Therefore, we are of the opinion that there is no reason for interfering in the conviction and sentence passed by the learned Sessions Judge. However, we see no special reason to deny the right of set off to the appellant if life imprisonment is commuted according to law. Hence, we make it clear that if sentence of life imprisonment is commuted, he will be entitled to the right of set off as provided under Section 428 of the Cr.P.C.

With the above observation, this appeal is dismissed.

Sd/-

J.B. KOSHY, JUDGE.

Sd/-
K. HEMA, JUDGE.

Krs.